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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 ERIK M. BREWITT,

11 Plaintiff,

12 v.

13 MICHAEL J. ASTRUE, Commissioner of  
14 Social Security Administration,

15 Defendant.

Case No. 09-5147 RJB/JRC

ORDER ADOPTING REPORT  
AND RECOMMENDATION

16 This matter comes before the Court on the Report and Recommendation of Magistrate  
17 Judge J. Richard Creatura (Dkt. 17). The Court has reviewed the Report and Recommendation,  
18 objections to the Report and Recommendation, the administrative record, and remainder of the  
19 file herein.

20 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

21 On December 28, 2004, Erik Brewitt filed an application for SSI disability benefits. Dkt.  
22 17, p.2. The matter was assigned to an administrative law judge (“ALJ”), who held a hearing on  
23 September 25, 2007. *Id.* On February 22, 2008, the ALJ issued a decision which found Mr.  
24 Brewitt was not disabled. *Id.* The ALJ decision was subsequently affirmed by the  
25 Administration’s Appeals Council. *Id.*

26 Mr. Brewitt sought judicial review of the ALJ decision pursuant to 42 U.S.C. §§ 405(g),  
27 1383(c)(3). Dkt. 17, p. 2. Mr. Brewitt argued that (1) the ALJ erred at step two in his assessment  
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1 of Mr. Brewitt's severe impairments; (2) the ALJ erred at step three in deciding whether Mr.  
2 Brewitt's impairments met or medically equaled the listing of impairments; (3) the ALJ erred in  
3 his assessment of Mr. Brewitt's credibility and his residual functional capacity ("RFC"); and (4)  
4 the ALJ's assessment at step five was in error. *Id.*

5 On October 9, 2009, Magistrate Judge J. Richard Creatura issued a Report and  
6 Recommendation recommending that the Court affirm the administrative decision. On October  
7 22, 2009, Mr. Brewitt filed his objections to the Report and Recommendation (Dkt. 18).

## 8 II. DISCUSSION

9 The Magistrate Judge reported that (1) the ALJ properly assessed Mr. Brewitt's  
10 credibility; (2) the ALJ properly evaluated Mr. Brewitt's alleged severe impairments; (3) the ALJ  
11 properly found the Mr. Brewitt's impairments did not meet or equal any of the listed impairments;  
12 (4) the ALJ properly evaluated Mr. Brewitt's RFC; and the ALJ properly completed step five of  
13 the administrative process. Mr. Brewitt replied that (1) the assessment of Mr. Brewitt's  
14 credibility was in error; (2) step two, three, and five of the administrative process was in error,  
15 and (3) the assessment of Mr. Brewitt's RFC was in error.

16 Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner's denial of  
17 social security benefits when the ALJ's findings are based on legal error or not supported by  
18 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir.  
19 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is such  
20 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
21 *Richardson v. Perales*, 402 U.S. 389, 201 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th  
22 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
23 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
24 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may  
25 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*  
26 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one  
27 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

28 Plaintiff bears the burden of proving that he is disabled within the meaning of the Social

1 Security Act. *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The Act defines disability  
2 as the “inability to engage in any substantial gainful activity” due to a physical or mental  
3 impairment that has lasted, or is expected to last, for a continuous period of not less than twelve  
4 months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A person is disabled under the Act only if  
5 his impairments are of such severity that he is unable to do his previous work, and cannot,  
6 considering his age, education, and work experience, engage in any other substantial gainful  
7 activity existing in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B); *Tackett v.*  
8 *Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

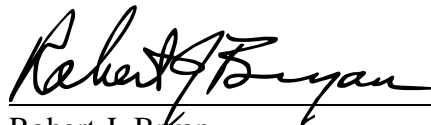
9 After reviewing the court record and the administrative files, the Court agrees with the  
10 Magistrate Judge’s Report and Recommendation affirming the administrative decision. The  
11 ALJ’s findings were not in legal error and were supported by substantial evidence in the record as  
12 a whole.

### 13 III. ORDER

14 The Court, having reviewed the Report and Recommendation and the remaining record,  
15 does hereby find and **ORDER**:

- 16 (1) The Court adopts the Report and Recommendation (Dkt. 17);  
17 (2) The Plaintiff’s action is **DISMISSED WITH PREJUDICE**; and  
18 (3) The Clerk is directed to send copies of this Order to plaintiff, and to the Hon. J.  
19 Richard Creatura.

20 DATED this 3<sup>rd</sup> day of November, 2009.

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22 Robert J. Bryan  
23 United States District Judge  
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